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09/841,820	04/25/2001	Jochen Wurtz	514413-3872	6300

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Please find below and/or attached an Office communication concerning this application or proceeding.

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/841,820
Filing Date: April 25, 2001
Appellant(s): WURTZ ET AL.

Howard Lee
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 3/12/07 appealing from the Office action mailed 09/11/06.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

McGraw-Hill Dictionary of Chemical Terms, Third Edition, copyright (c) 1984 by McGraw-Hill, Inc., p. 400

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 15-18,20-25,28,30-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pappas-Fader et al (USPN 5736486; 4/7/98) and JP 10-330202; 1998 on record. Pappas-Fader teaches a herbicidal mixture comprising anilofos with propanil or one or more compounds including chlorsulfuron (ALS inhibitor) sulfumeturon-methyl (ALS inhibitor) and / or hexazinone. See abstract, column 1 line 36 – column 4 line 41. Pappas-Fader teaches that the mixture can be formulated as solution, emulsifiable concentrate, suspension, etc. See column 10 lines 24-44. If the mixture is formulated as a solution, the ALS inhibitor(s) would inherently be dissolved since solution means ingredients therein are totally miscible. Note that Pappas-Fader suggests the mixture comprising actives other than sulfonylureas such as anilofos and propanil as well as sulfonylurea actives such as chlorsulfuron, sulfumeturon-methyl. Pappas-Fader teaches that surfactants such as dialkyl sulfosuccinate and organic solvents such as methanol, cyclohexanol, or decanol can be added to the mixture. See column 11 lines 9-29. Pappas-Fader teaches a method of applying the mixture to vegetation in order to control weed growth. See abstract, column 1 lines 39-55. Pappas-Fader does not a) exemplify a solution specifically comprising one or more

sulfonylureas, actives other than sulfonylureas, dialkylsulfosuccinate, and organic solvents such as methanol and b) teach the instant dialkylsulfosuccinates. It would have been obvious to one having ordinary skill in the art to make a solution comprising one or more sulfonylureas, actives other than sulfonylureas, dialkylsulfosuccinate, and organic solvents such as methanol. One would have been motivated to do this in order to develop an invention that would have been effective in controlling weeds in plants. Additional motivation to make the invention comes from the fact that the reference suggests the mixture for controlling weed growth in plants. With respect to the dialkylsulfosuccinate, JP '202 teaches a herbicidal composition comprising dioctyl sulfosuccinate. See abstract, claims 1 and 6. It would have been obvious to one having ordinary skill in the art to use dioctyl sulfosuccinate in the instant invention. One would have been motivated to do this since both references have the same utility, i.e., both references teach the control of weeds in plants using herbicides. Since Pappas-Fader broadly teaches the use of dialkylsulfosuccinates, the employment of the sulfosuccinates in claim 16 would have been obvious. This is true because dialkylsulfosuccinates have a common core structure, which make them functional. This common core is present in all sulfosuccinates and is responsible for their function; therefore, it would have been obvious to employ the sulfosuccinates of claim 16. The amounts of dialkylsulfosuccinate and ALS inhibitor would have been determined through routine experimentation. It is very possible that the optimum amounts would have fallen within the instant % ranges since the instant ranges are so broad. One would have been motivated to determine the optimum amounts in order to make an

invention that would have been effective in killing weeds without preventing healthy plant / crop growth.

(10) Response to Argument

The applicants argue a) ALS is not dissolved in Pappas-Fader or Yasi and no evidence is provided to show that this is an inherent property of Pappas-Fader or Yasi b) The assertion of inherency is based on a misinterpretation of the term "solution"; the McGraw-Hill Dictionary defines a solution is a single, homogeneous liquid, solid or gas phrase that is a mixture in which the components (liquid, gas, solid, or combinations thereof) are uniformly distributed throughout the mixture c) Yasi does not remedy deficiencies with the Pappas-Fader reference as it is directed to an aqueous suspension and therefore does not teach the herbicide compound in dissolved from, d) The table 38 provides unexpected stability data for (iodosulfuron). The table on page 38 also showed unexpected stability for foramsulfuron, mesosulfuron and combinations of iodosulfuron with fenoxaprop-ethyl and mefenpyr-ethyl. Based on these results, sulfonylureas as a class is nonobvious in instant invention.

The Examiner argues that Pappas-Fader teaches that ALS containing compositions can exist as solutions. The fact that a solution is a single, homogeneous liquid, solid or gas phase according to the McGraw-Hill Dictionary indicates that Pappas-Fader's composition existing as a solution would have the same characteristics as any other liquid solution, i.e., exist as a single, homogeneous liquid phase. Because Pappas-Fader can exist as a single, homogeneous liquid phase means that the composition contains chemicals which are totally miscible in one another. Therefore the

ALS inhibitor in the solution taught by Pappas-Fadder would be dissolved therein. Yasi was not employed to remedy the dissolution of ALS in the composition of Pappas-Fader, but rather Yasi was employed to show that dialkylsulfosuccinate compounds such as dioctyl sulfosuccinate are employed in herbicide composition. The alkyl sulfosuccinate have not been shown to enhance the stability of sulfonylurea compounds. Note that all of the examples in the table 38 employ an alkyl sulfosuccinate plus sulfonylurea. None of the examples in table 38 are without alkyl sulfosuccinate. Therefore, table 38 does not make it definite that alkyl sulfosuccinates enhance the stability of sulfonylureas.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Alton Pryor, Primary Examiner, AU 1616

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